**ADVANCED CONTRACT CLAUSES**

This document contains sample language that may be included in a contract for snow and ice management services. These clauses have been provided and vetted by a stakeholder group of snow and ice management, insurance and legal professionals. A qualified attorney must analyze all relevant facts and apply the applicable law to any matter before it can be determined if these clauses should be used in your specific contracts.

By using these clauses, the user agrees that he/she/it has consulted with local counsel regarding the clauses. The user further agrees that he/she/it will not hold SIMA nor any of the stakeholder review participants liable in the event of any lawsuits stemming from the use of these clauses, which are provided as recommendations and do not constitute legal advice.

**PAYMENT TERMS**

***Late Payments/Cessation of Services***

Invoices will be sent monthly. Full payment is due within 30 days from the date of invoice.

Late Payment Charges: Amounts not paid according to terms will be charged a service fee of 1.5% per month, or the maximum allowable by law, until paid in full. Contractor shall also be entitled to recover all reasonable costs, charges, expenses, and attorney’s fees expended or incurred therein.

Payment Delay: If for any reason Contractor does not receive payment within seven (7) calendar days after the payment is due, Contractor, upon giving seven (7) calendar days written notice to Customer, in addition to any other legal remedies, may stop its Contract Work until payment of the full amount owing to Contractor has been received.

***Holiday surcharges***

Customer agrees to pay surcharges in the amount of \_\_\_\_\_\_\_\_\_\_\_\_for snow and ice management services performed on Christmas Eve, Christmas Day, New Year’s Eve and New Year’s Day.

***Equipment rental recovery fees (retainer fees)***

Equipment Rental Recovery fees, if applicable, will be billed in five (5) equal monthly installments starting Nov 1.  Any snow and ice management services billed will be credited at 50% of the billings, up to the sum of the 5-month fees.  All snow and ice management services beyond that total will be billed at 100% for the remainder of the snow season.

**SNOWFALL TOTALS/LIMITS**

***Accumulation Totals on Site***

Customer understands that snow accumulation may vary throughout the area and that accumulation in one part of town is not necessarily indicative of the accumulation at the customer’s particular location. Contractor will receive accumulation totals based on the site’s ZIP code from a predetermined reliable weather service.

***Snowfall Limits***

This Agreement covers a total snowfall accumulation during a 24-hour period of \_\_\_\_\_\_ in/cm. Clearing of snowfall accumulation in excess of \_\_\_\_\_\_ in/cm per 24-hour period are additions to this Agreement and shall result in a surcharge of \_\_\_\_\_% being added to Owner’s next monthly invoice.

***Definition of Event Conclusion***

A snow or ice event is considered concluded 24 hours after a snow or ice storm has ended at the property, therefore concluding contractor’s responsibility for the event under this agreement. The ending time will be determined by data provided by the contractor’s reliable weather monitoring service.

**PROPERTY CONDITIONS & DAMAGE**

***Site condition/damage restrictions***

Contractor’s performance obligations are subject to parking lots and sidewalks being adequately maintained without defects, the absence of conditions created by poor drainage and the timely clearing of snow from the Property. Owner agrees that removal of snow from the property is Owner’s responsibility unless specifically agreed upon as an additional service in Exhibit A.

Owner shall be solely responsible for any damage, injury, or accident that is the result of or to damaged or worn parking lots or sidewalks or defects in them. Contractor will not be responsible for damage to hard surfaces or vegetation caused in the normal provision of winter services or through the use of salt or other de-icing material. Contractor shall not be held responsible for any property damage or bodily injury arising from poor drainage, the lack of storage space for snow or the failure or refusal of Owner to remove snow from the Owner’s premises.

***Snow storage***

Snow will be pushed to designated areas as agreed upon by the contractor and property owner/representative. Excessive accumulation will result in loss of parking spaces and reduced driving areas. Snow relocation within the property, or actual removal from the property is described in this contract.

***Damage reporting***

The owner will report in writing property damage allegedly caused by Contractor within 48 hours of having knowledge of the alleged damage. Contractor is not responsible for damage to site structures unless the Owner engages Contractor to install snow stakes every 20’ along curbs, driveway entrances and walks and to individually marked signs, walls, manholes, storm drains and other site structures as indicated under Scope of Work. Contractor will repair timely and properly reported mechanical damage if snow staking has been provided as part of this agreement as soon as possible following season in which the property damage occurred. Notwithstanding anything herein to the contrary, Contractor will have no obligation, and the Owner waives any damages for, any property damage not timely and properly reported.

***Concrete damage***

Contractor has no control over nor will accept any responsibility for the condition known as spalling, the flaking of the upper layer of cement on concrete surfaces that occasionally occurs on improperly mixed, poured, or finished concrete. This is a physical condition exacerbated by increased freeze thaw cycles common with the use of all chloride based ice-melting products.

**EMPLOYEE PROTECTION**

***Unsafe working conditions***

Owner understands and agrees that Contractor’s employees may not work safely if temperature and wind conditions combine to make a wind chill factor below 0° Fahrenheit. Owner understands and agrees that Contractor reserves the right to cease its sidewalk snow removal services in these severe conditions (without penalty) so as not to force unsafe conditions upon Contractor’s employees.

**LIABILITY**

***Refusal of services***

Contractor shall not be held responsible for any property damage or bodily injury that are the result of refusal of Services by Owner or its duly appointed agent or caused by the negligence of pedestrians, motorists or other third parties. Owner/Customer will assume all liability for the period in which services are/were refused.

***Limitation Of Liability***

Customer/Owner shall indemnify, defend and hold Contractor and its respective officers, agents, and employees, harmless against all loss, damage, expense and liability resulting from injury to or death of persons, including but not limited to, employees of Customer, property Owner or Contractor or any subcontractor, or injury to property, caused by the negligence or wrongful act of Contractor, including without limitation, negligence and performance of the obligations of Contractor under this Agreement. Customer agrees that Contractor shall not be strictly liable for any and all loss, damage, expense, and liability arising hereunder. Customer shall, respectively but not jointly and severally, indemnify Contractor from any and all liability, damages, costs, or other expenses incurred by Contractor hereunder arising out of the negligence or wrongful act, respectively, of Customer, or Customer’s respective agents, employees, or contractors. Each of the foregoing indemnities shall include the right of the Contractor to recover reasonable attorney’s fees in connection with any action to enforce the rights of the respective parties hereunder.

**REPORTING**

***Slip and fall reporting***

Reports of slip and falls, with supporting documentation, must be made to Contractor within 24 hours of when the owner/property manager is made aware of the incident, otherwise Contractor is released from any indemnity obligation.

**ICE MANAGEMENT**

***Rejection of site monitoring***

The use of salt/de-icing material is designed to expedite the process of melting of ice and snow in target areas. Its application may not provide instant or complete attainment of these goals, and may be affected by such variables as air/ground temperature, moisture content of precipitation, etc.

Owner/Customer acknowledges that Contractor is not engaged, nor does it accept engagement, as a continuing monitor of potentially dangerous or unsafe conditions that may arise by reason of thawing and refreezing of previously plowed or treated areas.

After Contractor completes its obligations arising from a single snow event, Customer agrees that it is Customer’s responsibility to monitor property for slick or dangerous conditions and notify Contractor. Contractor shall not be expected to service potentially dangerous conditions for which it has not been given notice. The services required of contractor under this Agreement shall be performed during those hours which the property is normally open for business, unless otherwise specified in Exhibit A. Snow events, ice storms, extreme temperatures, and blizzards may delay service times. In addition, these same events may require multiple visits, which include visits to tend to slick or dangerous conditions. Slick or dangerous conditions unrelated to the same snow event will be treated as a different service. Should Customer discover slick or dangerous conditions related to the snow event after the Contractor has left the site, Customer has \_\_\_\_ hours to notify Contractor of the dangerous condition. If Customer does not notify Contractor within \_\_\_\_ hours of the slick or dangerous condition, Customer expressly waives and indemnifies contractor from any injury or hazard that arises from the slick or dangerous condition.

***Salt supply***

Government mandated regulations or other factors or supply shortages may alter the availability of salt or deicers. Contractor cannot accept liability in these situations. Alternative materials may be required, and will be discussed at that time, as increased costs may apply.

**SERVICE RESTRICTIONS**

***Commencement of services***

All services specified in Exhibit A will be commenced in a reasonable manner and in a reasonable time frame based on industry standards. For purposes of this paragraph, “reasonable” is not defined as immediately upon reaching the “trigger depth.” Customer understands that Contractor has customers with different needs and Contractor has a method in which it begins snow operations. Customer and Contractor agree that Contractor will make its best efforts to arrive for general snow removal and de-icing operations within \_\_\_ hours.

***Restriction of service***

Contractor will not plow/salt or deice within three feet of any parked vehicles, equipment or other obstructions in parking lots, drives or other areas being cleared.  Please attempt to move obstructions prior to services being completed. Contractor is not responsible for snow or ice services in areas that are blocked by parked cars or otherwise inaccessible or obstructed.

**SUBCONTRACTORS**

***Scope of Work***

Subcontractor agrees to furnish \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[insert subcontractor labor and duties] and equipment necessary or required to complete the services described in the attached document [or Exhibit]. If the property owner requests the Subcontractor to perform other services not indicated on the property addendum or discussed with the General Contractor, the Subcontractor must receive written approval from the General Contractor prior to performing these services. Payment for any additional services will be agreed upon independently of this Agreement and prior to performance of any additional services by the Subcontractor.

***Terms***

The term of this Agreement will be from \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[insert dates that relationship between general and sub will last. If only utilizing the sub for one particular job, this paragraph can be altered to that effect.

***Contract Obligations***

Subcontractor is bound by the terms of this Agreement and assumes all the obligations and responsibilities the General Contractor assumes in any separate agreement with the property owner(s), insofar as they are applicable to the Subcontractor. Should any terms or conditions of this Agreement be inconsistent with any Agreement between property owner(s) and the General Contractor, the language and terms of this Agreement shall govern.

***Liability***

The Subcontractor assumes the entire responsibility and liability for and agrees to hold the General Contractor harmless from any and all damage or injury of any kind or nature whatsoever, with the exception of intentional acts of the General Contractor, (including death resulting from such damage or injury) to all persons whether employees of the Subcontractor or otherwise, and to all property (including loss of use of such property) caused by, resulting from, arising out of, or occurring in connection with the execution of its work under this Agreement. If any person shall make a claim for any damage or injury (including death resulting from such damage or injury) as described above, then the Subcontractor shall indemnify and save harmless Contractor and the property owner(s) from and against such claim and all loss, expense, and damage or injury that General Contractor or the property owner(s) may sustain as a result of such claim. Subcontractor agrees to assume on behalf of the General Contractor and the property owner(s) the defense through counsel of any action at law or equity which may be brought against General Contractor or the property owner(s) upon such claim and to pay on behalf of the General Contractor and property owner(s) upon the General Contractor’s demand the amount of any judgment which may be entered against the General Contractor and/or property owner(s) in any such action. The obligation under this section shall be continuing and shall not be diminished by any approval or acceptance of or payment for work by the General Contractor.

***Postseason inspections/damage payouts***

You agree that We will withhold five percent (5%) of each invoice amount until a final post-season inspection is completed and any and all damages caused, in whole or in part, by You, whether to Customer property or Our property (including vehicles and equipment), are fully repaired.  If You do not repair damages to Our satisfaction and in a timely manner, then We may make all necessary repairs.  If We make such repairs, We will deduct all incurred costs from the final payment, and We will invoice You for any amounts exceeding the final payment.  If We are unable to reasonably determine which of our subcontractors caused certain damage, then We may, in our sole and absolute discretion, allocate the cost of repairs proportionately amongst Our subcontractors, including You; and You agree to share proportionately in such costs. A final post-season inspection will be completed no later than \_\_\_\_\_days/weeks after the final event.

**ISO Requirements**

***ISO Certification Requirements***

You understand that ISO requires that We and Our agents, including Our subcontractors, complete certain education and training relative to snow and ice removal. We will provide You with education and training modules used to meet ISO requirements. You agree to fully complete all modules We provide to You prior to performing any services for Us.

**Insurance Requirements**

***Proof of insurance***

During the term of this Agreement, you must purchase and maintain the insurance coverages specified.  All insurance policies must cover snowplowing operations and must not have any snowplowing or snow removal exclusion or limitation of coverage.  You agree that we may, in our sole and absolute discretion, withhold or deny any or all payment to you for services you perform without the required insurance coverage. Concurrently with Your execution of this Agreement, You will provide Us with certificates of insurance demonstrating the insurances required under to this Section, together with complete copies of all insurance policies – including all endorsements – which You are required to carry under this Agreement.  All certificates of insurance must specify that snow and ice management services are included in the policy. Thereafter, You must provide Us with such certificates and copies upon Our reasonable request.